

**LAW OFFICES OF GREGORY A. YATES, P.C.**  
16830 Ventura Blvd., # 250  
Encino, California 91436  
TEL. (310) 858-6944; FAX. (818) 905-7038

**DANIEL C. MORGAN & ASSOC.**  
5851 Thille Street, Suite 103  
Ventura, California 93003  
TEL: (805) 815-4610; FAX: (805) 800-1880

Attorneys for Plaintiffs, TOMAS BARRERA, SR., individually and as a Personal Representative of THE ESTATE OF TOMAS BARRERA, JR.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARIA LAZOS, et al,

Plaintiff,

vs.

CITY OF OXNARD, et al,

Defendants.

TOMAS BARRERA, SR.

Plaintiff,

vs.

CITY OF OXNARD, et al,

Defendants.

Case No. CV 08-02987 RGK (SHx)

PLAINTIFFS' MOTION IN LIMINE  
NO. 6 TO PRECLUDE DEFENDANTS  
FROM REFERRING TO SALINAS'  
EMPLOYMENT RECORDS AND JOB  
APPLICATIONS AS CONFIDENTIAL  
AND/OR BEING SUBJECT TO A  
PROTECTIVE ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

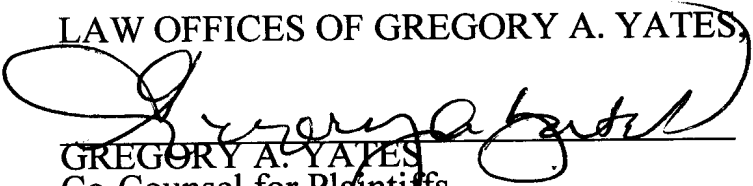
Plaintiffs, MARIA LAZOS and TOMAS BARRERA, SR., individually and as representatives of the ESTATE OF TOMAS BARRERA, hereby move this Court for an order precluding Defendants from referring to Salinas' employment records and/or job applications as confidential or being subject to a protective order.

This motion is based upon the ground that any confidentiality of the records has been waived. This motion is further based on the attached Memorandum of

1 Points and Authorities, the pleadings and papers on file in this action and upon such  
2 of argument and evidence as may be presented prior to or at the hearing of this  
3 motion.


4  
5 Dated: June 23, 2009

LAW OFFICES OF GREGORY A. YATES, P.C.

  
6  
7 GREGORY A. YATES  
Co-Counsel for Plaintiffs,  
8 TOMAS BARRERA, SR., individually and as a  
Personal Representative of THE ESTATE OF  
9 TOMAS BARRERA, JR.

10 Dated: June 26, 2009

LAW OFFICES OF JENNY SCOVIS

  
12  
13 JENNY SCOVIS  
Counsel for Plaintiff,  
14 MARIA LAZOS, individually and as a Personal  
Representative of THE ESTATE OF TOMAS  
15 BARRERA, JR.

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.**

3                   **DEFENDANTS HAVE WAIVED THE CONFIDENTIALITY OF THE**  
4                   **DOCUMENTS**

5                   Prior to this incident, Defendant SALINAS has been involved in the shooting  
6 of Oliverio Martinez. Mr. Martinez filed a lawsuit, entitled *Martinez v. City of*  
7 *Oxnard, et al*, CV 98-9313 FMC (AJWx). During the course of discovery in this  
8 matter, Plaintiff Martinez obtained some of Salinas' employment records and job  
9 applications. These records were obtained pursuant to a protective order.

10                  During the trial in the *Martinez* case, Plaintiff called Dr. Randolph Nutter to  
11 testify. On April 4, 2007, Dr. Nutter testified regarding Salinas' job applications with  
12 the OPD. These records were introduced and admitted into evidence, and were *not*  
13 filed under seal. Dr. Nutter's testimony was in open court. Salinas' job application  
14 was read into the record by Mr. Paz, counsel for Plaintiff. Pertinent pages of Dr.  
15 Nutter's trial testimony transcript are attached hereto as **Exhibit "A."**

16                  Further, at his deposition in the *Martinez* case, taken on April 13, 2005, Dr.  
17 Nutter testified to Salinas' pre-employment applications and employment records  
18 with OPD, which were part of the records produced by the Defendants. Dr. Nutter's  
19 deposition testimony and these documents *were not marked confidential and were not*  
20 *submitted under seal*. These documents and the testimony indicated that Salinas had  
21 failed his pre-employment psychological evaluation with the LAPD.

22                  Furthermore, at the deposition of Chief Art Lopez, taken on July 15, 2005,  
23 Chief Lopez testified to the records from LAPD concerning Salinas' job applications,  
24 including psychological assessments and letters informing him he had been  
25 disqualified. These documents were also read into the record word for word. Chief  
26 Lopez' deposition testimony, including the exhibits, *were not marked confidential*  
27 *and were not submitted under seal*.

28                  ///

1 It is well established that a party who voluntarily discloses confidential  
2 information, waives their confidentiality. Therefore, it is submitted that these  
3 documents are now a matter of public record, and any confidentiality, whether by way  
4 of protective order or otherwise, has been waived.


5 **II.**

6 **CONCLUSION**

7 Based on the above, it is respectfully requested that the Court preclude  
8 Defendants from referring to Salinas' employment records and/or job applications as  
9 confidential or being subject to a protective order.


10  
11 Dated: June 26, 2009

LAW OFFICES OF GREGORY A. YATES, P.C.

12  
13   
14 GREGORY A. YATES  
15 Co-Counsel for Plaintiffs,  
16 TOMAS BARRERA, SR., individually and as a  
17 Personal Representative of THE ESTATE OF  
18 TOMAS BARRERA, JR.

16 Dated: June 26, 2009

LAW OFFICES OF JENNY SCOVIS

17  
18   
19 JENNY SCOVIS  
20 Counsel for Plaintiff,  
21 MARIA LAZOS, individually and as a Personal  
22 Representative of THE ESTATE OF TOMAS  
23 BARRERA, JR.

# EXHIBIT “A”

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

THE HONORABLE FLORENCE-MARIE COOPER, JUDGE PRESIDING

OLIVERIO MARTINEZ,

Plaintiff,

vs.

No. CV 98-9313 FMC(AJWx)

CITY OF OXNARD; THE OXNARD POLICE  
DEPARTMENT; CHIEF ART LOPEZ, ANDREW  
SALINAS, MARIA PENA, et al.,

Defendants.

REPORTER'S TRANSCRIPT OF THE TESTIMONY OF  
DR. RANDOLPH NUTTER

Los Angeles, California

Wednesday, April 4, 2007

CERTIFIED  
COPY

PAT CUNEO, CSR 1600, CRR, CM  
Official Reporter  
United States Courthouse  
Roybal Federal Building  
Room 181-E  
255 East Temple Street  
Los Angeles, California 90012  
(213) 626-0197

1 APPEARANCES OF COUNSEL:

2 FOR THE PLAINTIFF: LAW OFFICES OF R. SAMUEL PAZ  
3 SONIA MERCADO & ASSOCIATES  
4 BY: R. SAMUEL PAZ, ATTORNEY AT LAW  
5 and SONIA MERCADO, ATTORNEY AT LAW  
6 5701 W. Slauson Avenue, Suite 202  
Culver City, California 90230  
(310) 410-2981  
samuelpaz@msn.com  
soniamer2002@yahoo.com

7 FOR THE PLAINTIFF: THE LAW OFFICES OF JOHN BURTON  
8 BY: JOHN BURTON, ATTORNEY AT LAW  
9 414 South Marengo Avenue  
Pasadena, California 91101  
(626) 449-8300

10 FOR THE DEFENDANTS: LAW OFFICES OF ALAN E. WISOTSKY  
11 BY: ALAN E. WISOTSKY, ATTORNEY AT LAW  
12 and JEFFREY HELD, ATTORNEY AT LAW  
13 and JAMES S. EICHER, JR., ATTORNEY AT LAW  
14 300 Esplanade Drive  
Suite 1500  
Oxnard, California 93030  
(805) 278-0920  
lawyers@wisotskylaw.com

1     **LOS ANGELES, CALIFORNIA; WEDNESDAY, APRIL 4, 2007; 8:03 A.M.**

2                                     **-ooo-**

3             THE COURT: Next witness for the plaintiff.

4             MR. PAZ: Yes, Your Honor. We would like to call  
5     Dr. Randolph Nutter to the stand.

6             THE COURT: Okay. Let me read an instruction to  
7     the jury before this witness takes the stand.

8             You are instructed that evidence concerning the  
9     employment history of Officer Salinas, including evaluations  
10    by the Los Angeles Police Department, coworkers at the  
11    Oxnard Police Department, testimony of this next witness, is  
12    all admitted for a limited purpose.

13            It is relevant on the question of whether the  
14    Oxnard Police Department is liable to the plaintiff for  
15    failure to adequately train, hire, or supervise  
16    Officer Salinas. It may not be considered by you for any  
17    other purpose.

18            Thank you.

19            **RANDOLPH NUTTER, PLAINTIFF'S WITNESS, SWORN**

20            THE COURT: Please stop there, sir. Please raise  
21    your right hand to be sworn.

22            Do you solemnly swear that the testimony you're  
23    about to give in the proceedings pending before this court  
24    shall be the truth, the whole truth, and nothing but the  
25    truth, so help you God?



1 THE WITNESS: I do.

2 THE COURT: Thank you.

3 Be seated in the witness chair, please.

4 *(Pause in the proceedings.)*

5 THE COURT: Did we remove the exhibits from the  
6 last witness? If not, please do so.

7 *(Pause in the proceedings.)*

8 MR. WISOTSKY: May I walk through the well?

9 THE COURT: Sure.

10 *(Pause in the proceedings.)*

11 THE COURT: Would you state and spell your name  
12 for the record, please, sir.

13 THE WITNESS: Randolph A. Nutter. N-u-t-t-e-r.

14 THE COURT: Your first name again was?

15 THE WITNESS: Randolph. R-a-n-d-o-l-p-h.

16 THE COURT: Thank you.

17 **DIRECT EXAMINATION**

18 BY MR. PAZ:

19 Q. Good morning, Dr. Nutter.

20 A. Good morning.

21 Q. Would you tell the jury what is your profession, sir?

22 A. I'm a clinical psychologist.

23 Q. And how long have you been doing clinical psychology?

24 A. Since about 1979, 1980.

25 Q. And would you please describe what is your professional

1 background, sir.

2 A. I have a Ph.D. in clinical psychology from the United  
3 States International University. I have a Master's Degree  
4 from Pepperdine University and a Bachelor of Science Degree  
5 in psychology from Brigham Young University.

6 Q. And do you have a particular relationship with the  
7 Oxnard Police Department?

8 A. Yes.

9 Q. And would you describe that, please.

10 A. I did their preemployment psychological examinations.

11 Q. And how long did you do those preemployment  
12 psychological evaluations?

13 A. From about 1980 to about 2004 or '05.

14 Q. Okay. And were you the only psychologist that did that  
15 work for the Oxnard Police Department?

16 A. Yes.

17 Q. And before you started working for Oxnard, what kind of  
18 work did you do then?

19 A. I was hired by the Ventura County Sheriff's Department  
20 as their chief psychologist, and I did preemployment  
21 psychological examinations for them on new hires from about  
22 1979 to 2001, I think.

23 Q. Now, have you also performed the kinds of services that  
24 you do, that is, screening police officers -- screening  
25 candidates who want to become police officers for other law

1 enforcement agencies in the County of Ventura?

2 A. Yes, I did.

3 Q. And would you tell us which ones were those?

4 A. Well, there's Oxnard PD and Santa Paula Police  
5 Department, Santa Barbara PD, Santa Barbara Sheriff's  
6 Department.

7 Q. Okay.

8 A. There might be some more. I can't think right at this  
9 moment.

10 Q. Okay. And in doing this psychological evaluations,  
11 what relationship -- let me ask it this way. Is there any  
12 sort of standards that are set forth by the Police Officers  
13 Standards and Training, what's been referred to as the POST?

14 A. Yes.

15 Q. And would you describe those, please.

16 A. For a psychological examinations of police officers,  
17 POST, Police Officers Standards and Training, set the  
18 guidelines; and they mandated the type of psychological test  
19 that should be used; and it went into a law sometime later.

20 The first test is the Minnesota Multiphasic  
21 Personality Inventory which is the MMPI; and the second test  
22 is one of three, 16PF or a CPI test which, along with  
23 interviews and background information, is used by the  
24 psychologist to determine the psychological fitness of a  
25 prospective peace officer.

1 Q. And why don't you explain to the jury. What's the  
2 purpose of having a preemployment screening, a psychological  
3 screening, in order to evaluate a candidate for work?

4 A. Well, years ago, to hire a police officer, basically,  
5 there was no psychological examination; and over the years,  
6 they -- Police Officers Standards and Training and police  
7 scientists determined that police officers were committing  
8 crimes and police officers were behaving like the people  
9 they were arresting.

10 So they did some research and determined that you  
11 should have some standards when you hire police officers;  
12 and there should be medical standards, physical agility  
13 standards, psychological standards, background standards.

14 So those were put into effect. So for the  
15 psychological portion, they determined that there are  
16 certain traits that are found in successful police officers;  
17 and they wanted those traits to be developed and to be -- to  
18 see if they were present in applicants; and you would also  
19 be able to screen out prospective police applicants that did  
20 not meet these standards.

21 Q. Now, Doctor, as I understand it, part of what you do is  
22 you administer tests and part of what you want to look at is  
23 the past employment, the person's life experiences, to sort  
24 of put the two together and find out what kind of person he  
25 is, right?

1 A. Yes. During the interview, you would want to get as  
2 much background information as possible -- social history,  
3 family history -- to determine the whole package of the  
4 applicant.

5 Q. Why do you want to look at someone's past as it relates  
6 to what they're going to do as a police officer?

7 A. Well, a lot of times the past -- people's past behavior  
8 determines future behavior or can give you an idea of future  
9 behavior.

10 So if an applicant has a scattered past or has  
11 relationship problems or has drug abuse issues or anger  
12 management issues, those are flags that you would want to  
13 talk about in the interview to determine, along with the  
14 psychological tests, if those are the people you would want  
15 to be your police officers and giving them a gun and powers  
16 of arrest and those types of things.

17 Q. Now, would you explain just briefly then what kind of  
18 factors are you looking for when you evaluate a police  
19 officer or, for that matter, a reserve candidate for police  
20 officer work?

21 A. Well, you're looking for -- first of all, you're  
22 looking for applicants that do not have anger management  
23 issues, do not have any type of pathology, are not  
24 depressed.

25 You don't want applicants that have relationship

1 issues that they can't deal with -- substance abuse issues,  
2 prior arrests, prior drug use. Those types of things you  
3 would not want.

4 When you're interviewing someone and you're doing  
5 the interview, the background, you're putting them all  
6 together. You would want your psychological test to show  
7 that they are free of all these things and free of any job  
8 relevant pathology so that you could certify that they're  
9 suitable.

10 Q. Anger -- you mentioned good anger management control.  
11 Is that the ability to control one's temper?

12 A. Yes. You know, police officers are confronted daily  
13 with citizens that don't like them and are upset by them;  
14 and they have to be able to handle their own anger.

15 They have to be able to not get upset and control  
16 their emotions and handle citizens in an appropriate manner.

17 Q. Do you look to see whether someone is impulsive as  
18 opposed to controlled?

19 A. Yes. You want people -- you want to hire applicants  
20 that are not impulsive people because impulsivity in police  
21 work would be a negative trait. You would want applicants  
22 to be police officers that think through behavior, that  
23 don't automatically rush to do something and then have to  
24 try to undo it later.

25 Q. Do you have -- do you look to see if a person has a

1 past of good problem-solving skills?

2 A. Yes. You would want someone that solves problems well,  
3 you would want someone that has good judgment, you would  
4 want someone who is stable emotionally; and these are things  
5 that are determined not only by life history and family  
6 background but also the psychological tests.

7 Q. And, finally, what is, in terms of your evaluation,  
8 what do you look for in terms of a person's maturity?

9 A. Well, you would want to hire applicants for police  
10 officers that are mature. You -- if you hire applicants  
11 that are immature, then there's a probability they're going  
12 to have to grow up within that department and the department  
13 is going to have to be somewhat parental.

14 You would want applicants that are mature,  
15 established applicants that know their abilities, know their  
16 limitations, people that are mature. You would want to  
17 screen out immature people.

18 Q. Now, are you familiar with California Government Code  
19 Section 1030 entitled "Minimum Standards for Peace  
20 Officers"?

21 A. Yes.

22 Q. Would you describe to the jury, what is that statute?  
23 What does that law do?

24 A. That law, or statute, says that police officers have to  
25 be free of mental disease and medical -- certain medical

1 conditions and physical conditions.

2 Q. Without reading it, does it sound like to be free or be  
3 found free from any physical, emotional, or mental  
4 condition --

5 A. Yes.

6 Q. -- that might adversely affect the exercise of the  
7 power of a peace officer?

8 A. That's true, yes.

9 Q. Now, is one of the minimum qualifications established  
10 by Government Code Section 1031 is that the candidate must  
11 be of good moral character as determined by a thorough  
12 background investigation?

13 A. Yes.

14 Q. Now, would you explain to the jury, because this is  
15 where it gets into your area of expertise, would you explain  
16 to the jury, what's the interrelationship between the  
17 psychological evaluation that you and every other police  
18 psychologist do and the background investigation?

19 A. Well, the background investigation comes before the  
20 psychological examination; and the department who is going  
21 to refer the applicant for the psychological evaluation and  
22 prospectively hire him does a thorough background check on  
23 the applicant.

24 They go and make house calls. They get into their  
25 background. They interview family members. They interview



1 significant others. They run a prior record check. They  
2 check for narcotics use.

3 They do a very extensive background so, literally,  
4 the person's life is in a book prior to being hired so that  
5 the department knows what they're getting when they hire  
6 this individual.

7 Q. Now, are you familiar with the hiring process at most  
8 departments?

9 A. Yes.

10 Q. It's a pretty standardized process?

11 A. Yes.

12 Q. How does the, in your view, how does the process begin  
13 if, for example, I want to go out and be an officer tomorrow  
14 and I want to -- you know, what's the first steps I would  
15 take?

16 A. You would walk into the police department you want to  
17 work for and you ask for an application and you fill that  
18 application out and you return it to that same police  
19 department.

20 And then someone from their personnel division  
21 will call you; and they'll go over the application and see  
22 if you meet their requirements, if you have anything that  
23 would keep you from working for them; and then they ask more  
24 questions and you fill out more forms and they start the  
25 background process.

1 Q. Now, is one of the forms that they use known as a  
2 personal history questionnaire?

3 A. Yes.

4 Q. And explain, how does that work?

5 A. The applicant fills out where he lives, where he was  
6 born, his parents, his wife, his significant other, their  
7 children.

8 He fills out people's names, people's addresses,  
9 phone numbers, so the police department can contact them and  
10 see what kind of character and what kind of person this  
11 applicant is.

12 Q. Now, Doctor, in the 25 years you've been doing  
13 preemployment psychological screening for police officers,  
14 what is your preference as far as getting the background  
15 material so you can interrelate them with the psychological  
16 tests that you give?

17 A. I would like to get all the background information. I  
18 would like to get as much information on an applicant as I  
19 can get.

20 Q. And why is that?

21 A. Well, because then I have the whole picture in front of  
22 me. I know exactly what the person is about, how they've  
23 lived their life, how they've related with other people, how  
24 they get along with other people; and I don't have to rely  
25 on just what they tell me. I can verify prior marriages,

1 prior employment, issues with prior employment. The whole  
2 package is right there.

3 Q. Okay. Now, Doctor, do most law enforcement agencies  
4 that you work with provide you with background information?

5 A. No, not -- no, they don't.

6 Q. And does Oxnard provide you with background  
7 information?

8 A. No.

9 Q. Okay. And have they ever provided you with background  
10 information?

11 A. No.

12 Q. Now, if you don't have the background information  
13 then, how are you then do your evaluation if you don't have  
14 that information?

15 A. Well, when the person -- someone will refer the person  
16 to me for the examination; and at that time I'll ask --  
17 sometimes it's a secretary, sometimes it's a sworn peace  
18 officer -- I'll ask them: What is their background like?  
19 Have they used drugs? I ask some types of questions that  
20 I'll get some answers to.

21 Then I'll talk to them, interview them; and  
22 they'll take the test and everything; and then I'll ask them  
23 my list of questions for the interview that I need to know  
24 to make sure they have -- don't have any mental conditions  
25 that would be -- that they could not do their job.

1           And I rely on them to tell me the truth. You  
2 know, I've been doing it long enough. Sometimes, I can spot  
3 people that aren't telling me the truth. But I'm not a  
4 polygraph machine, and I miss it.

5           So I -- if I have -- if something glares out at  
6 me, I'll call the department back; and I'll say: I have a  
7 question about this or I have a question about that; and  
8 they'll usually let me know if that's the truth or it's not  
9 the truth.

10 Q. Now, over the last 25 years, have you developed a  
11 standard list of questions that you ask a candidate when you  
12 don't have the background materials?

13 A. Yes.

14 Q. And how do you start?

15 A. Well, I'll get their -- I already have their name.  
16 Then I'll get their age. I'll ask them where they work, how  
17 long they've worked there, and basically what they do.

18           I'll ask them if there's been any problems at  
19 their employer. If they've been disciplined with their  
20 employer. You know, I'm looking for a stable employment  
21 record.

22           If they tell me that's not so, it's scattered  
23 employment, then I'll go back to find out the longest  
24 employment, what they've had, have they been fired. Those  
25 kinds of employment issues.

1 I ask them if they've ever been a police officer.  
2 If they have, have they ever been disciplined as a police  
3 officer. Have they ever had any internal investigations  
4 that were founded. Have they been in any shootings.

5 Do they get along with their peers, their fellow  
6 officers. Have they had any prior psychological  
7 examinations. If they had, did they pass them; did they  
8 fail them.

9 And once we have all those established and  
10 there's -- and I don't have to go on to other areas from  
11 their answers, then I'll get into: Have you ever been  
12 sexually abused. Have you ever been the victim of any  
13 domestic violence. Have you ever used drugs. Have you been  
14 in the military. Have you been in any car accidents that  
15 are your fault. Have you been arrested.

16 I ask about the father, the mother, siblings. I  
17 ask them who they live with. Their relationship. Have they  
18 ever hit the person they've been involved with out of anger.  
19 Their education.

20 Have they been in counseling. Have they been  
21 prescribed medication for depression or stress from a  
22 physician. Have they been in the care of a psychiatrist or  
23 psychologist.

24 Q. Let me stop you there, Doctor.

25 A. Sure.

1 Q. Now, when you -- if you ask somebody: Have you ever  
2 worked for a law enforcement agency or have you ever worked  
3 for another police department or applied as a police  
4 officer, do you ask if people have applied to be a peace  
5 officer?

6 A. Yes, I have.

7 Q. Okay. Now, if the candidate says: No, I haven't  
8 applied to be a police officer, how can you without the  
9 background materials find that out?

10 A. Well, I can't unless the way the person answers me, if  
11 he's nervous or she's nervous or if there is some clue that  
12 I pick up from the interview, I might call the department  
13 and say: Has this person ever been a police officer or  
14 applied anywhere? But I usually just take what they tell  
15 me.

16 Q. So if a candidate, for example, has worked at a  
17 department for a number of months and understands and  
18 knows about the hiring process and that you're not going to  
19 get the background materials, is there a greater risk that  
20 somebody who is coached about what Mr. Nutter is going to  
21 ask or Dr. Nutter is going to ask can get past you?

22 A. Sure. Yes.

23 Q. Now, do you have an opinion as to whether this kind of  
24 policy where you don't get the background materials, whether  
25 that defeats the purpose of Government Code Section 1031(f)

1 that requires that they be found free of any physical,  
2 emotional, or medical conditions that might adversely affect  
3 the powers of a police officer?

4 A. I think that the spirit of the Government Code would be  
5 the physician or the psychologist that's determining whether  
6 an applicant is free of these things, the assumption is they  
7 have all the information to make that determination.

8 If they only have half that information, then it's  
9 harder to make the determination: Are they free of any  
10 medical or psychological conditions.

11 Q. Now, are you aware of whether Oxnard Police Department  
12 has changed this policy of not providing the background  
13 information to the psychologists?

14 A. I was told that they now send the entire background  
15 package to the psychologist that's doing their  
16 preemployment.

17 Q. Now, when you have a blind system, that can lead to the  
18 hiring of a person like Mr. Salinas who, in your case, may  
19 have not been totally candid in your interview; is that  
20 correct?

21 A. Yes.

22 MR. EICHER: Objection, Your Honor. That's  
23 argumentative. No foundation for that.

24 THE COURT: It's argumentative. I'll sustain it,  
25 and it's 12 o'clock so we'll take our fifteen-minute break.

1 MR. PAZ: Very well, Your Honor. Thank you.

2 (The jurors exited the courtroom.)

3 (Recess.)

4 (The jurors entered the courtroom.)

5 THE COURT: You may continue with direct.

6 MR. PAZ: Thank you, Your Honor.

7 Q. Just before we broke, Dr. Nutter, I -- just to clear up  
8 one point, I asked you a question about whether most law  
9 enforcement agencies provide background materials to you;  
10 and I think your answer was in the negative; is that  
11 correct?

12 A. Yes.

13 Q. Okay. Now, would you describe for the jury what kind  
14 of background materials do you get typically when you're  
15 starting these interviews?

16 A. Well, I'll get some verbal information over the  
17 telephone from the background investigator or the secretary.

18 Q. Okay.

19 A. Sometimes Oxnard would send me a polygraph on the  
20 applicant, and other departments would send me perhaps a  
21 poly or part of a personal history statement. Something  
22 along those lines.

23 Q. Now, if a person -- from your experience with Oxnard,  
24 if a person was a prior law enforcement candidate or  
25 applicant or reserve officer or police officer, would that



1 be the kind of background information you would receive?

2 A. Usually, yes.

3 Q. Now, getting back to the question I had asked you just  
4 before we broke, I think you said -- you were talking about  
5 the policy of not having any background materials on an  
6 officer or not be provided with the background materials.

7 Can this policy lead to the hiring of a person who  
8 is not honest?

9 A. Yes.

10 Q. And then you described that because there is no way to  
11 go back and find out if they aren't?

12 A. That's correct.

13 Q. Okay. Now, during this case, you were provided with  
14 some materials that were given to you from myself, from my  
15 office, that were prepared by the Oxnard Police Department  
16 which was the background materials. Do you recall that?

17 A. Yes.

18 Q. And we have that attached as Exhibit 53, and that's  
19 just to your left there.

20 A. *(Looking at document.)*

21 Q. And I'm not going to ask you to look at it yet.

22 A. Okay.

23 Q. And I just want to also say you also received some  
24 background materials from the Los Angeles Police Department;  
25 and we've marked those as Exhibit 97 and those are the one

1 to your left.

2 A. Yes.

3 Q. Okay. Now, what do you base -- well, let me ask you  
4 this now. You see the deposition up there, the deposition  
5 of Randolph Nutter just before you?

6 A. Yes.

7 Q. And would you look at Exhibit No. 1?

8 A. On this one here?

9 Q. Yes, sir. On the deposition.

10 A. *(Looking at document.)*

11 Q. And I'd like to have that marked as Exhibit 201, Your  
12 Honor.

13 THE COURT: Hold on a second.

14 *(Exhibit 201 marked for I.D.)*

15 THE WITNESS: Yes.

16 BY MR. PAZ:

17 Q. What is that, Doctor?

18 A. That's a copy of my index card that I use in my office  
19 on every applicant.

20 Q. Okay. And that particular index card, for whom is  
21 that?

22 A. For Andrew J. Salinas.

23 Q. Now, you conducted two evaluations of Andrew Salinas;  
24 is that right?

25 A. Yes.

1 Q. And the first was for the position of reserve officer  
2 on October 2 -- October 12<sup>th</sup>, 1995?

3 A. Yes.

4 Q. And then there was a second one on May 14<sup>th</sup>, 1996,  
5 for the position of police officer, right?

6 A. Yes.

7 Q. Now, in the 25 years you've been doing these  
8 evaluations, had you developed a routine practice as to when  
9 you begin your interview and you ask these questions about  
10 law enforcement, prior law enforcement experience,  
11 application, preemployment screening for police work?

12 First tell the jury about how many of these such  
13 interviews have you done where you follow this pattern?

14 A. Almost every interview I've ever done I asked.  
15 Thousands, probably.

16 Q. Now, did you have a particular routine or habit in  
17 which you would record information about prior law  
18 enforcement information?

19 A. Yes.

20 Q. Would you describe that, please.

21 A. When I find out if an applicant has been a police  
22 officer before or worked at a department in some capacity, I  
23 would make a note of that on my index card for future  
24 reference.

25 Q. Okay. And the index card that you're looking at marked

1 as Exhibit 201, is that the index card that you prepared  
2 when you did the interview of Mr. Salinas?

3 A. Yes.

4 Q. Okay. Now, was it your custom and practice then to put  
5 -- why don't you describe the information you would put down  
6 assuming you that you had been told that the applicant had a  
7 prior preemployment psychological evaluation and whether  
8 they had applied for reserve or police officer. What would  
9 put down?

10 A. I would put down where, what agency gave him the  
11 preemployment psychological, the date, and the position he  
12 was applying for and if he'd passed or not.

13 Q. And did you keep these cards as a part of your  
14 permanent business activities for the Government Code  
15 Section 1031 evaluations?

16 A. Yes.

17 Q. And you kept it for every single interviewee that  
18 you've done for all these years?

19 A. Yes.

20 Q. Okay. Now, would you tell the jury, do you have any  
21 indication on that card that Mr. Salinas had any prior law  
22 enforcement experience?

23 A. No.

24 Q. Now, sir, does that -- what, in your opinion, what  
25 conclusion can you draw from that, the fact of the absence

1 of an entry in your permanent records of your interviews?

2 MR. EICHER: Your Honor, I object. This is pure  
3 speculation at this point.

4 THE COURT: Overruled.

5 I'll allow the answer.

6 THE WITNESS: I was not told about his prior  
7 employment.

8 BY MR. PAZ:

9 Q. Now, if you were not told by the department and you  
10 were not told by Salinas that there was any prior  
11 preemployment psychological evaluations with LAPD, is there  
12 any way that you could go back and check?

13 MR. EICHER: Your Honor, I'm just going to object.  
14 It lacks foundation to form that question as to  
15 Officer Salinas; what he was told.

16 THE COURT: Well, I don't think he's -- I think  
17 it's just a hypothetical question so I'll allow it in that  
18 sense.

19 THE WITNESS: If no one told me, there'd be no way  
20 for me to check, no.

21 BY MR. PAZ:

22 Q. And that's the weakness of this process?

23 A. Yes.

24 Q. When you were first subpoenaed for a deposition in this  
25 case, up until that point, had you seen the background

1 information on Mr. Salinas?

2 A. No.

3 Q. All you had was your card?

4 A. Yes.

5 Q. Now, when you came for the deposition, were you  
6 provided the background materials on Mr. Salinas that was  
7 developed by the Oxnard Police Department?

8 A. Yes.

9 Q. And did those -- did those documents show that  
10 Mr. Salinas was not honest with you during your evaluation  
11 in other particulars?

12 A. Yes.

13 MR. EICHER: Your Honor, I'm going to object at  
14 this point. Essentially, this is improper expert opinion  
15 based upon inadmissible hearsay reports.

16 THE COURT: I think the way the question is  
17 phrased it's objectionable. Sustained.

18 MR. PAZ: I'll repeat it.

19 Q. Did you review the records?

20 A. At your office?

21 Q. Yes, sir.

22 A. Yes.

23 Q. And that was just before the deposition, correct?

24 A. Yes.

25 Q. Now, did you find from the review of those records that

1 Mr. Salinas had not told you the truth during the course of  
2 his interview with you?

3 MR. EICHER: Same objection, Your Honor. These  
4 reports are inadmissible hearsay and this opinion here by an  
5 expert is not admissible at this time.

6 MR. PAZ: I'm just asking a preliminary question,  
7 a foundational question, Your Honor.

8 THE COURT: All right. Go ahead.

9 THE WITNESS: Could you repeat that? I'm sorry.

10 MR. PAZ: Sure.

11 May I have the court reporter repeat it?

12 THE COURT: Well, if you're going to ask the same  
13 question, then we're going to end up with the same problem.

14 MR. PAZ: Okay.

15 THE COURT: In terms of the records, the court has  
16 indicated that the records are admissible in order to  
17 determine whether it would make a difference to this witness  
18 had he seen them.

19 I don't think it's appropriate to ask him if in  
20 his opinion Officer Salinas was telling the truth and so  
21 that question is objectionable.

22 MR. PAZ: Okay.

23 Q. Then let me turn your attention then to Exhibit 97.

24 A. *(Searching through documents.)*

25 Q. And that would be page 009.

1 A. That is not in this transcript here.

2 Q. No, no. It's in the white book on your left; the  
3 exhibit book.

4 THE COURT: I don't know what volume 97 would be  
5 in.

6 *(Pause in the proceedings.)*

7 THE WITNESS: 09?

8 MR. PAZ: Yes, sir.

9 THE COURT: You find it?

10 THE WITNESS: Yes. Thank you very much.

11 Yes, I have it.

12 *(The exhibit was displayed on the screen.)*

13 MR. EICHER: All right. At this time,  
14 anticipating what documents are being shown to the jury, I'd  
15 like to request a sidebar.

16 THE COURT: Okay. You want to take it down while  
17 we go to sidebar?

18 MR. PAZ: Sure.

19 *(The following was held at the bench:)*

20 MR. EICHER: Your Honor, I think at this point  
21 it's improper to display these documents from LAPD on two  
22 counts. One, it's going to call for speculation from this  
23 witness and it lacks foundation that these records would  
24 have been available. None of that foundation has been laid  
25 and to put them in front of the jury now is inappropriate.



1 MR. PAZ: Your Honor, the records are being  
2 offered for the information from this point of view of the  
3 psychologist as to whether or not he was given information  
4 during the course of the interview.

5 THE COURT: Well, one of the questions that I  
6 think you're raising -- and I wasn't sure, although in your  
7 opening statement, or Mr. Burton's opening statement, you  
8 indicated, Mr. Burton, that at the time of this evaluation  
9 the Oxnard police had possession of the LAPD records but did  
10 not turn them over. I'm hearing from you that is not  
11 correct?

12 MR. EICHER: That's not correct. I would like to  
13 ask for an offer of proof if they were available to the  
14 Oxnard Police Department.

15 THE COURT: I mean, I don't know.

16 MR. PAZ: No, they did not have them. At the time  
17 of the evaluation, the Oxnard Police Department did not have  
18 them. What it was --

19 THE COURT: What is this?

20 MR. EICHER: This is a psychological assessment  
21 report from the LAPD files.

22 THE COURT: From LAPD?

23 MR. PAZ: And so the foundation for this is that  
24 this is a kind of report Mr. Nutter would use in his  
25 profession and it's the kind of assessment that -- it has

1 the information.

2 It was not disclosed by Mr. Salinas during the  
3 personal interview so it's coming in to show, one, that the  
4 information was withheld from him. It was withheld because  
5 of the policy of not -- withholding even the simplest  
6 personal statements so in the Oxnard records Mr. Salinas  
7 says: I went to LAPD and I applied. However, Mr. Nutter,  
8 as he's testified, never received that information from  
9 Mr. Salinas.

10 THE COURT: We have two different things going  
11 here. One is the fact that he had previously applied to  
12 LAPD. That information should have come from Mr. Salinas;  
13 and if it didn't, the jury can draw whatever inference it  
14 wants to draw from that.

15 But if these records were not available to Oxnard  
16 PD, Oxnard PD could not have turned it over to him.

17 MR. PAZ: The point is they were available. If  
18 you want me to lay a foundation first, I can introduce the  
19 document that says they were invited to call and that  
20 they -- they sent an inquiry, a standard inquiry form to  
21 LAPD; and LAPD wrote back and says: Please -- if you want  
22 to come see the records, please call 213-485, et cetera; and  
23 so they were available to them.

24 THE COURT: Okay.

25 MR. EICHER: That is not a proper foundation. In

1 fact, there is testimony of an expert that Mr. Paz is aware  
2 of, an LAPD chief that worked at the time, who indicated  
3 that the call to review the file was simply a telephonic  
4 review. They don't have a witness to come in here and say  
5 that.

6 MR. PAZ: That also has no foundation. He is  
7 speculating.

8 THE COURT: Okay. It still goes to maybe the  
9 issue of whether Oxnard PD should have done more to get the  
10 records. That's an argument that goes to the Monell issue.  
11 But as far as what these records say, I can't see any way  
12 you can put that in front of the jury.

13 Oxnard didn't have it. This witness never saw it.  
14 The only way it would become relevant is for its truth and  
15 it's clearly hearsay.

16 I said that, you know, the background is going to  
17 be material on the question of what was known or should have  
18 been known. But if no one had it, then I think the only  
19 argument you can make is that there was information  
20 available through LAPD that they didn't go look at or didn't  
21 make the phone call or whatever.

22 MR. PAZ: Your Honor, the assessments that were  
23 done are all based on the materials that Mr. Salinas and the  
24 background materials that Salinas provided to the LAPD.  
25 What we're trying to prove is that those -- he then was able

1 to go to Oxnard and say those things.

2 THE COURT: Right.

3 MR. PAZ: And, therefore, he was able to get hired  
4 by virtue of the policy of no background, you don't get it,  
5 I don't have to tell you.

6 THE COURT: Mr. Salinas --

7 MR. PAZ: Well, if I can't have the conclusions of  
8 the doctor, without the doctor coming to testify, then --

9 THE COURT: That's all right.

10 MR. PAZ: -- I can call him.

11 THE COURT: If you get a witness from L.A., then  
12 they certainly can talk about what they knew and what they  
13 learned. But not from this witness.

14 MR. PAZ: Even though he laid the foundation he is  
15 a psychologist and relies on these kinds of documents?

16 THE COURT: Right. No.

17 *(The following was in open court in the jury's presence.)*

18 BY MR. PAZ:

19 Q. We'll come back to this in a few minutes or some other  
20 time, Doctor.

21 Let us turn your attention to the records that  
22 were prepared by the Oxnard Police Department; and those  
23 would be Exhibit 53. If you could get those before you.

24 A. Yes. Page number 3079?

25 Q. Yes. It starts with 3079.

1 A. Okay.

2 Q. Now, are these the background materials that you saw on  
3 April 13<sup>th</sup>, 2005, when you were, you were going to be  
4 deposed?

5 A. Some of them, yes.

6 Q. Okay. Now, turn your attention then to -- let me ask  
7 you some global questions first.

8 Now, had you -- if it would have been within your  
9 ability to have seen the background information that was  
10 developed by Oxnard, would you have -- would it have been  
11 your professional opinion that Mr. Salinas would be  
12 qualified to be a peace officer from the psychological point  
13 of view?

14 MR. EICHER: Your Honor, I object at this point.  
15 There's no foundation as to what specific documents he's  
16 talking about.

17 THE COURT: You may answer the question if you  
18 understand it.

19 THE WITNESS: No.

20 BY MR. PAZ:

21 Q. You do understand the question?

22 A. That if I would have seen the background information,  
23 from reading the background information, do I think he would  
24 have been a suitable candidate for a police officer.

25 Q. Yes; that's the question?

1 A. And my answer would be no, he would not be.

2 Q. Okay. Now, let me bring your attention to Exhibit 53.  
3 That would be page 3245 and -47.

4 I'm sorry. 3245.

5 A. 3245?

6 Q. Yes, sir.

7 *(Pause in the proceedings.)*

8 MR. PAZ: I'm sorry. Wrong page.

9 *(Pause in the proceedings.)*

10 BY MR. PAZ:

11 Q. Yes. 3256 is the right page.

12 A. *(Searching through documents.)* Yes, I have that.

13 *(The exhibit was displayed on the screen.)*

14 BY MR. PAZ:

15 Q. Now, this is a personal inquiry questionnaire that was  
16 prepared for the applicant Andrew Salinas to be a police  
17 officer; and it was sent to a person who was his supervisor,  
18 Beverly Steele.

19 Now, is this one of the documents that you  
20 reviewed?

21 A. At your office, yes.

22 Q. Yes. All right.

23 Now, going to Question No. 6. There's an entry  
24 there. Question No. 6: Are you convinced the applicant is  
25 honest?

1           And this -- just so I lay the foundation on the  
2 next page -- this is November 1, 1995; and I'll be putting  
3 up the second page.

4           Is that correct?

5     A.    Yes.

6     Q.    Okay. That's on the second page, and it's signed by  
7 Beverly Steele?

8     A.    Yes.

9     Q.    And it -- when was your interview of Mr. Salinas, the  
10 first one?

11    A.    If I could review that card again. It was '95.

12    Q.    What month?

13    A.    It would be October 12<sup>th</sup>, '95.

14    Q.    And the second one?

15    A.    Was May 14<sup>th</sup>, '96.

16    Q.    Okay. So in between that time on November 1<sup>st</sup>, 1995,  
17 Mr. Salinas's supervisor where he's working as a clerk had  
18 an opinion that the applicant was honest.

19           And then it goes on and says: Is applicant --  
20 No. 7: Is the applicant reliable? Answer: No.

21           And it says "Comment. Not in a working  
22 relationship where other work depends on his completing  
23 work."

24           Question No. 8. Now, let's go back another  
25 second. At the time you do your interview with the

1 applicant, I think you said you asked them questions about  
2 their employment and how they're getting along in their  
3 work?

4 A. Yes.

5 Q. Now, is that the kind of question then that if someone  
6 had told you that they were not having a good relationship  
7 with their supervisor as a police clerk, is that the kind of  
8 question then that you would have wanted to follow up with?

9 A. Yes.

10 Q. And what would you do -- if someone was honest with you  
11 and told you: I'm having a little trouble at my job as a  
12 clerk, what would be, as a reviewing psychologist, what  
13 would be your practice then to go and determine or make --  
14 or ascertain what's going on?

15 A. Well, I would ask him what kinds of trouble, who is  
16 your supervisor, or what's going on. I'd probably talk to  
17 the background person and say, you know, so and so told me  
18 that they're having problems. What are the problems; trying  
19 to determine exactly what the issues are.

20 Q. Number 8 indicates -- Question No. 8 -- I'll zoom in on  
21 it a little bit.

22 *(The exhibit was displayed on the screen.)*

23 BY MR. PAZ:

24 Q. "Would you trust applicant with confidential matters?"  
25 And that one says: "Unable to form an opinion."



1           Then if I could then turn your attention down to  
2 the bottom of that page. Question No. 17. "In your opinion  
3 is the applicant emotionally stable?

4           "Answer: No. Comment: Needs to mature."

5           Now, is that -- let me just go then to the next  
6 page which is Exhibit No. 53 which is 2057. That's the next  
7 page for you, Dr. Nutter.

8           A. Okay.

9           Q. It says, "Question 19: Do you know anything else about  
10 the applicant which should be investigated before  
11 appointment to this position considering such things as  
12 maturity, loyalty, common sense, judgment, tolerance,  
13 ability to recognize own limitations, et cetera.

14           "Answer: Uses poor judgment in prioritization of  
15 workload."

16           Now, is that the kind of thing that would be a  
17 negative indicator for a person who you're going to entrust  
18 with the responsibilities of a law enforcement agent?

19           A. I would like to follow up on that, yes.

20           Q. Now, there's a reference to a -- the center of the  
21 page, it says -- No. 22 -- the question is "Would you want  
22 the applicant to be a police officer (or reserve officer)  
23 for the city in which you live and to be responsible for the  
24 safety of you or your family?

25           "Answer: No.

1 "If no, why?

2 "At this time applicant needs to focus on current  
3 job and not take it for granted that he will be going to the  
4 police academy in January."

5 Now, did Mr. Salinas -- well, let me ask it this  
6 way. Is this the kind of information that had you known  
7 that he was not having a good experience at his work as a  
8 clerk, is that the kind of things that you would then want  
9 to have known so you could make an assessment as to whether  
10 or not he should be hired?

11 A. Yes.

12 Q. Now, No. 25. "How did applicant react to company  
13 policy rules and procedures?

14 "Answer: Resisted.

15 "Comment: Applicant does what he wants to do  
16 instead of job priority."

17 And the next one down, it says -- No. 27 --

18 "Please check any problems affecting the applicant's work."

19 And it has "disciplinary problems, unable to follow  
20 instructions"; and the comment is "applicant at sometimes is  
21 insubordinate." Do you see that?

22 A. Yes.

23 Q. How would that affect, in your professional opinion as  
24 a psychologist who reviews police candidates, if the past is  
25 some indication of the future, how would that play out on

1 the field when a person now has the responsibility to obey  
2 civil rights, respect the rights of others, and has the  
3 power to use a gun and use force?

4 A. That would be a big deal. I think that would be a big  
5 negative. That would not be good at all.

6 Q. All right. Now, Dr. Nutter, there was a period of  
7 time -- strike that.

8 Let me give you another application which is on  
9 page 3256.

10 A. *(Searching through documents.)*

11 Q. Let's see. I'm sorry. Let me go back to 3250.

12 *(Pause in the proceedings.)*

13 MR. PAZ: If I may just have a moment, Your Honor.  
14 I'm sorry.

15 THE COURT: Yes.

16 *(Pause in the proceedings.)*

17 MR. PAZ: Let me give you this one, Your Honor.  
18 Let me give you this one, Dr. Nutter. This is on 3254.

19 *(The exhibit was displayed on the screen.)*

20 BY MR. PAZ:

21 Q. This is the application of -- it's another one of these  
22 personal inquiry questionnaire, and it's also of  
23 Andrew Salinas. It's to a Mr. David King at AMSEC  
24 International. It says that he worked with the applicant.  
25 He was employed for three months in 19 -- from apparently